HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 314 (S/S)2006

Smt. Krishna Sharma W/o Satish Kumar Sharma,
Presently working as L.T. Teacher of Music Subject,
In Sri Sanatan Dharm Rashtriya Kanya Inter College,
Rudrapur, Udham Singh Nagar. ---- Petitioner.

Versus

1. District Education Officer, Rudrapur, U.S.Nagar,
2. Principal, Sri Sanatan Dharm Rashtriya Kanya Inter College, Rudrapur, U.S. Nagar,
3. Manager of Sri Sanatan Dharm Rashtriya Kanya Inter College, Rudrapur, U.S. Nagar

----Respondents.

Sri S.S. Yaday, learned counsel for the petitioner,
Learned Standing Counsel for the State/respondent no. 1.
Sri Vipual Sharma, learned counsel for respondent nos. 2 & 3.

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.S. Yaday, learned counsel for the petitioner learned Standing Counsel for the State and Sri Vipul Sharma, learned counsel for respondent nos. 2 & 3.

2. The present writ petition has been filed by the petitioners for the following reliefs:-

a. Issue a writ, order or direction in the nature of certiorari quashing the Clause 2(Ya) of impugned advertisement dated 15.02.2006 (letter no. 122 Ni.a/05-06) annexed as annexure-1 to the writ petition,

b. Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 & 3 not to disturb the status of the petitioner as Assistant Teacher Music in L.T. Grade and further to regularise the petitioner on the said post,

c. Issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case,

d. Award cost of the petition in favour of the petitioner.

3. Submission of the learned counsel for the petitioner is that she was appointed as Assistant Teacher (Music) in Sanatan Dharm Rashtriya Kanya Inter College, Rudrapur, district Udham Singh Nagar vide order dated 10.01.2000 under Parent Teacher's Association Scheme.

4. It is contended by learned counsel for the petitioner that the Govt. has already issued an order directing all the District Inspector of Schools and the Committee of Management of Aided Schools not to fill up the posts, which are being held by the persons appointed under Parent Teacher's Association Scheme.

5. Sri Sharma, learned counsel for the respondent nos. 2 & 3 has submitted that though the petitioner was appointed on 10.01.2000 as Assistant Teacher on stop gap arrangement, however annexure no. 3 to the counter affidavit filed by the respondent nos. 2 & 3 points out that the petitioner was appointed under Parent Teacher's Association Scheme. Annexure no. 3 of the counter affidavit is the letter of Manager to the District Inspector of Schools annexing the list of Teachers who have been appointed under Parent Teacher' Association Scheme in the Institution. The papers relating to the appointment of petitioner were sent by the Committee of Management to the District Inspector of Schools for approval, however the District Inspector of Schools till date has not approved appointment of the petitioner. Learned Standing

Counsel for the State has submitted that approval was not granted by the District Inspector of School for the reason that the petitioner was not having requisite qualification when she was appointed as Assistant Teacher in Music.

6. In view of the aforesaid letter of Committee of Management, learned counsel for the petitioner has submitted that the post held by the petitioner cannot be filed in view of the Govt. Order.

7. Hon'ble Mr. Justice Rajesh Tandon, J. on 08.03.2006 passed an order in the writ petition to the following effect:-

"In the meantime, however, if the fresh selection takes place in pursuance of the advertisement, the petitioner shall continue to work."

8. It is admitted by the respondents that the Govt. has already passed order that the posts held by the Teachers appointed under Parent Teacher's Association Scheme in the Institution should not filled in view of the fact that the matter of PTA Teacher is under consideration of the Govt.

9. Appointment means 'validly appointed' and a person who was not holding requisite qualification at the time when he has appointed and further was not granted approval by the Competent Authority cannot be said to have been appointed validly.

10. It is admitted fact that the petitioner was not having requisite qualification, which is required under the law for appointment on the post of Assistant Teacher (Music) on 10.01.2000.

11. In the circumstances, the appointment of the petitioner cannot be treated as valid appointment. Further, since no approval was granted by the District Inspector of Schools, the appointment was also not approved. Counsel for the petitioner has submitted that the Director School Education, Uttaranchal has also issued a letter on 8th June 2006 not to fill up the posts in the Institution concerned till the Directorate takes a decision.

12. On one hand, the petitioner is challenging the advertisement inviting applications for appointment on the post of Assistant Teacher (Music) in the Institution on the ground that since she is appointee under Parent Teacher's Association Scheme, the appointment can not be made in pursuance of the advertisement. On the other hand, she has submitted that she has applied for the post in pursuance to the advertisement, therefore the respondents may be directed to consider her application for the post of Assistant Teacher (Music) in the Institution. The prayer made by the petitioner is apparently contradictory.

13. As stated by the learned counsel for the petitioner, since order has already been passed by the Director of School Education, and the matter of appointment of the Teachers appointed under Parent Teacher's Association Scheme is under consideration of the Govt., the writ petition has become infructuous.

14. Accordingly, the writ petition is dismissed being infructuous.

(M.M. Ghildiyal, J.)

July 17, 2006:
NCM: